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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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10 IN RE: Bard IVC Filters Products  
11 Liability Litigation,  
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13

No. MDL 15-02641-PHX-DGC  
**ORDER**

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15 The parties have filed updated reports on cases with service of process and plaintiff  
16 profile form issues, cases for which no federal jurisdiction exists, and duplicate cases. *See*  
17 Docs. 21406, 21410, 21426. The Court will address each category of cases.

18 **A. Cases with Service of Process Issues.**

19 Case Management Order No. 4 requires each Plaintiff who files a short form  
20 complaint to send a request for waiver of service to Defendants pursuant to Rule 4 of the  
21 Federal Rules of Civil Procedure. Doc. 363 at 4. Rule 4 provides that “if a defendant is  
22 not served within 90 days after the complaint is filed, the court – on motion or on its own  
23 after notice to the plaintiff – must dismiss the action without prejudice against that  
24 defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).

25 Defendants identify 11 cases that have not been served on Defendants. Docs. 21406  
26 at 2-3, 21410-5 (Am. Ex. G), 21426 at 2. Plaintiffs in these cases, which are listed below,  
27 shall have until **March 18, 2020** to send the short form complaint and a request for waiver  
28 of service to Defendants’ counsel. *See* Doc. 21406 at 3; Fed. R. Civ. P. 4(d)(1), (m); *United*

1 *States v. 2,164 Watches, Inc.*, 366 F.3d 767, 772 (9th Cir. 2004) (district courts have broad  
 2 discretion under Rule 4(m) to extend time for service). By **April 1, 2020**, the parties shall  
 3 file an updated report indicating for each case whether service has been completed by the  
 4 **March 18** deadline and, if not, Plaintiff shall state the reasons for the delay. The Court  
 5 may dismiss any case in which service has not been completed absent Plaintiff showing  
 6 good cause for the failure to serve. *See* Fed. R. Civ. P. 4(m); Doc. 19874 at 4.

Case Caption	Case Number
Margie Cornelius v. C. R. Bard, Inc.	2:19-cv-02716
Leona Nigh v. C.R. Bard, Inc.	2:19-cv-04059
Norman Rose v. C.R. Bard, Inc.	2:19-cv-04083
Franky Williams v. C.R. Bard, Inc.	2:19-cv-04070
Douglas J. Dohan v. C.R. Bard, Inc.	2:19-cv-04069
Penni Hendrickson v. C.R. Bard, Inc.	2:19-cv-04073
Melissa Jeanne Kacou v. C.R. Bard, Inc.	2:19-cv-04110
Lauren Kent v. C.R. Bard, Inc.	2:19-cv-04076
Bryon Rieken v. C.R. Bard, Inc.	2:19-cv-04061
Rickey Scott v. C.R. Bard, Inc.	2:19-cv-04063
Gunther Vacek v. C.R. Bard, Inc.	2:19-cv-04051

#### 20 **B. Cases with Plaintiff Profile Form (“PPF”) Issues.**

21 Case Management Order No. 5 requires each Plaintiff who files a short form  
 22 complaint to provide a PPF to Defendants within 60 days of filing the complaint. Doc. 365  
 23 at 1. If no PPF was received within the 60-day period, Defendants were to send an overdue  
 24 letter to Plaintiff’s counsel giving Plaintiff an additional 20 days to provide a PPF. *Id.* at 2.  
 25 Defendants could seek dismissal of the case if Plaintiff failed to provide a PPF during this  
 26 grace period. *Id.*

27 The Court previously dismissed cases in which no complete PPF had been provided  
 28 to Defendants. Docs. 19874 at 3, 20667 at 5-6. Defendants identify 45 additional cases in

which Plaintiffs have provided no PPF or a deficient PPF. Docs. 21406 at 4, 21410-6 (Am. Ex. H), 21426 at 3. Plaintiffs in these cases, which are listed below, shall have until **March 18, 2020** to provide complete PPFs to Defendants. *See* Docs. 19874 at 3, 21406 at 4. Each PPF shall include the place of filter implant. The parties shall provide an updated report on these cases by **April 1, 2020**. The Court may dismiss any case in which no complete PPF is provided by the **March 18** deadline. *See* Doc. 19874 at 3.

Case Caption	Case Number
Kelly McCoy v. C. R. Bard, Inc.	2:18-cv-03466
Kristi G. Bailey v. C.R. Bard, Inc.	2:17-cv-04029
David Breeden v. C.R. Bard, Inc.	2:19-cv-01535
Charles Finch v. C.R. Bard, Inc.	2:19-cv-01533
Ross A. Grey v. C.R. Bard, Inc.	2:17-cv-04030
Jeanette McFarland v. C.R. Bard, Inc.	2:19-cv-01511
Thomas Orest v. C.R. Bard, Inc.	2:17-cv-04095
Agnes Roberts v. C.R. Bard, Inc.	2:17-cv-00138
Steven Rogers v. . C.R. Bard, Inc.	2:17-cv-04083
Delores Watson v. C.R. Bard, Inc.	2:17-cv-03990
Christopher Beasock v. C.R. Bard, Inc.	2:19-cv-01465
Sherry Lynn Black-Goodrow v. C.R. Bard, Inc.	2:18-cv-00406
Michael Campobasso v. C.R. Bard, Inc.	2:19-cv-01575
Kandy Carpenter v. C.R. Bard, Inc.	2:19-cv-01525
Reba Carter v. C.R. Bard, Inc.	2:19-cv-01457
Bruce R. Cunningham v. C.R. Bard, Inc.	2:19-cv-01236
Iarzella Dennard v. C.R. Bard, Inc.	2:19-cv-01539
Mark Dills v. C.R. Bard, Inc.	2:19-cv-01512
Nicolas R. Garon v. C.R. Bard, Inc.	2:19-cv-01238
Jeremy Gates v. C.R. Bard, Inc.	2:19-cv-01498
Deborah S. Hamby v. C.R. Bard, Inc.	2:19-cv-01449

1	Joanie Hansford v. C.R. Bard, Inc.	2:19-cv-01526
2	Nancy Harmon v. C.R. Bard, Inc.	2:19-cv-00721
3	Rudy Headley v. C.R. Bard, Inc.	2:19-cv-01497
4	Kenneth I. Holbrook v. C.R. Bard, Inc.	2:19-cv-01234
5	Anthony Jackson v. C.R. Bard, Inc.	2:19-cv-01467
6	Karen Jandula v. C.R. Bard, Inc.	2:19-cv-02305
7	Linda Jenkins v. C.R. Bard, Inc.	2:18-cv-03935
8	Lisa Johnson v. C.R. Bard, Inc.	2:19-cv-02001
9	Jeramey Kohar v. C.R. Bard, Inc.	2:19-cv-01780
10	Elizabeth Mello v. C.R. Bard, Inc.	2:19-cv-00104
11	Daniel Person v. C.R. Bard, Inc.	2:19-cv-03189
12	Prudence Peterson v. C.R. Bard, Inc.	2:18-cv-02090
13	Angela Rhodes v. C.R. Bard, Inc.	2:19-cv-02135
14	Sandra Risner v. C.R. Bard, Inc.	2:19-cv-02136
15	Kimberly Roberts v. C.R. Bard, Inc.	2:18-cv-02828
16	Alejandro G. Santana v. C.R. Bard, Inc.	2:18-cv-02264
17	Edward Schaab v. C.R. Bard, Inc.	2:19-cv-02133
18	Ricky Schrader v. C.R. Bard, Inc.	2:19-cv-02132
19	Melissa Sepeda v. C.R. Bard, Inc.	2:18-cv-01585
20	Stephanie Smith v. C.R. Bard, Inc.	2:19-cv-02267
21	Clyde Solomon v. C.R. Bard, Inc.	2:19-cv-01466
22	Justin Ubel v. C.R. Bard, Inc.	2:19-cv-02073
23	Kim Whitaker v. C.R. Bard, Inc.	2:19-cv-02075
24	Scottie C. Wolford v. C.R. Bard, Inc.	2:19-cv-01250

### C. Cases without Federal Jurisdiction.

Federal subject matter jurisdiction may be based on either federal question jurisdiction or diversity jurisdiction. 28 U.S.C. §§ 1331, 1332. Courts “analyze federal question jurisdiction with reference to the well-pleaded complaint rule.” *Yokeno v. Mafnas*,

1 973 F.2d 803, 807 (9th Cir. 1992). Under that rule, “federal jurisdiction exists only when  
 2 a federal question is presented on the face of a properly pleaded complaint.” *Scholastic*  
 3 *Entm’t, Inc. v. Fox Entm’t Grp., Inc.*, 336 F.3d 982, 986 (9th Cir. 2003). The complaint  
 4 must establish either that “federal law creates the cause of action or that . . . the plaintiff’s  
 5 right to relief necessarily depends on resolution of a substantial question of federal law.”  
 6 *Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold &*  
 7 *Easement*, 524 F.3d 1090, 1102 (9th Cir. 2008) (quoting *Franchise Tax Bd. v. Constr.*  
 8 *Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983)).

9 The master complaint in this MDL asserts seventeen state law claims. Doc. 364  
 10 ¶¶ 166-349. Because the complaint asserts no federal claim and Plaintiffs’ right to relief  
 11 on the state law claims does not depend on resolution of a federal law question, the Court  
 12 lacks subject matter jurisdiction under the federal question statute. *See* 28 U.S.C. § 1331;  
 13 *Yokeno*, 973 F.2d at 809.

14 Subject matter jurisdiction must therefore be based on diversity of citizenship. *See*  
 15 *Yokeno*, 973 F.2d at 809. District courts have diversity jurisdiction over cases between  
 16 citizens of different states involving claims greater than \$75,000. 28 U.S.C. § 1332(a).  
 17 Section 1332 requires complete diversity between the parties – that is, the citizenship of  
 18 the plaintiff must be diverse from the citizenship of each defendant. *See Caterpillar, Inc.*  
 19 *v. Lewis*, 519 U.S. 61, 68 (1996).

20 For purposes of diversity jurisdiction, Defendant C. R. Bard, Inc. is a citizen of New  
 21 Jersey and Defendant Bard Peripheral Vascular, Inc. is a citizen of Arizona. *See* Doc. 364  
 22 ¶¶ 11-12; *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (noting  
 23 that “a corporation is a citizen of any state where it is incorporated and of the state where  
 24 it has its principal place of business”) (citing 28 U.S.C. § 1332(c)). Complete diversity  
 25 does not exist, therefore, where the Plaintiff is a resident of either Arizona or New Jersey.  
 26 *See Williams v. United Airlines, Inc.*, 500 F.3d 1019, 1025 (9th Cir. 2007) (“Although  
 27 diversity jurisdiction provides an independent basis for federal jurisdiction over state law  
 28

claims, complete diversity is lacking in this case because both [plaintiff] and [defendant] are citizens of California.”).

The parties’ updated reports identify 25 cases in which diversity jurisdiction does not exist because the Plaintiff is either a resident of Arizona or New Jersey. Docs. 21406 at 5, 21410-7 (Am. Ex. I), 21426 at 3-4.<sup>1</sup> A district court may dismiss a case for lack of subject matter jurisdiction at any time during the pendency of the action. *See* Fed. R. Civ. P. 12(h)(3); *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002) (noting Rule 12(h)(3) permits a district court to “raise the question of subject matter jurisdiction[] sua sponte”); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1230-31 (9th Cir. 2006) (an MDL “transferee judge exercises all the powers of a district judge in the transferee district under the Federal Rules of Civil Procedure”). The following cases lack subject matter jurisdiction and are **dismissed without prejudice**:<sup>2</sup>

Case Caption	Case Number	Plaintiff’s Residence
Roderick L. Tunstall v. C. R. Bard, Inc.	2:16-cv-02382	New Jersey
Hugh Fraser v. C.R. Bard, Inc.	2:19-cv-01670	Arizona
Gloria Arino v. C.R. Bard, Inc.	2:18-cv-00529	Arizona
Kennith Beaulieu v. C.R. Bard, Inc.	2:17-cv-02589	New Jersey
Nichole Boggans v. C.R. Bard, Inc.	2:17-cv-02764	New Jersey
David Bunsick v. C.R. Bard, Inc.	2:18-cv-02908	New Jersey
Sandora Carter v. C.R. Bard, Inc.	2:19-cv-03610	New Jersey
Deborah Coleman v. C.R. Bard, Inc.	2:19-cv-03926	Arizona

<sup>1</sup> In two of the listed cases, diversity jurisdiction exists because the Plaintiffs are Arizona residents and have sued only C. R. Bard, Inc., a citizen of New Jersey. *See* Doc. 21426 at 3-4 (citing *Jeanne Hunt v. C. R. Bard, Inc.*, 2:19-cv-00011, and *Michael Parr v. C. R. Bard, Inc.*, 2:18-cv-04797). These two cases will be unconsolidated from the MDL and will remain pending in this District.

<sup>2</sup> Plaintiffs’ Lead Counsel assert that some of the cases involve ongoing settlement discussions, but do not identify any particular case. No case dismissed for lack of subject matter jurisdiction is listed as a Track 2 settlement case (*see* Doc. 21410-4), and neither Plaintiffs’ Lead Counsel nor any individual Plaintiff’s counsel has explained why the cases should not be dismissed at this time. *See* Doc. 16343 at 6-7.

1	Phillip Colombo v. C.R. Bard, Inc.	2:16-cv-03829	Arizona
2	Alexander Doughty v. C.R. Bard, Inc.	2:19-cv-03624	New Jersey
3	Christine Gober v. C.R. Bard, Inc.	2:17-cv-02900	New Jersey
4	Howard Highfill v. C.R. Bard, Inc.	2:17-cv-01897	Arizona
5	Kent Hoeft v. C.R. Bard, Inc.	2:16-cv-03571	Arizona
6	Arthur B. Kubofcik v. C.R. Bard, Inc.	2:19-cv-02331	New Jersey
7	Donna L. Moore v. C.R. Bard, Inc.	2:16-cv-02601	New Jersey
8	William Rivera v. C.R. Bard, Inc.	2:19-cv-03759	Arizona
9	Damien Robinson v. C.R. Bard, Inc.	2:19-cv-04023	New Jersey
10	Carol Rogers v. C.R. Bard, Inc.	2:19-cv-03882	New Jersey
11	Sonya J. Wallace v. C.R. Bard, Inc.	2:19-cv-04095	New Jersey
12	Kenneth Wantland v. C.R. Bard, Inc.	2:18-cv-03673	Arizona
13	Cheryl Ann Washington v. C.R. Bard, Inc.	2:19-cv-01274	New Jersey
14	Erika Weining v. C.R. Bard, Inc.	2:19-cv-02956	Arizona
15	Latanyia Williams v. C.R. Bard, Inc.	2:19-cv-02954	New Jersey
16	Joseph Cornellier v. C.R. Bard, Inc.	2:18-cv-02953	New Jersey
17	Dennis Trocciola v. C.R. Bard, Inc.	2:18-cv-04874	New Jersey

#### **D. Duplicate Cases.**

The Court previously dismissed duplicative cases filed in this MDL. Docs. 16343 at 4-5, 18540 at 2, 19874 at 1; *see M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082, 1091 (9th Cir. 2012) (“It is well established that a district court has broad discretion to control its own docket, and that includes the power to dismiss duplicative claims.”). Defendants identify more than 40 additional Plaintiffs who have filed multiple cases in this MDL. Docs. 21406 at 5, 21410-8, -9 (Am. Exs. J, K). The following duplicate cases are **dismissed**:

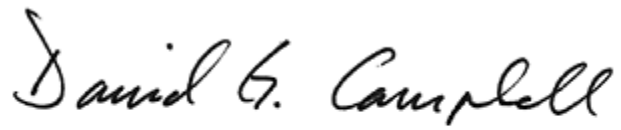
Case Caption	Case Number
Amy Eggers v. C. R. Bard, Inc.	2:18-cv-04231
James Douglas Hall v. C.R. Bard, Inc.	2:19-cv-01235
Alisha Martin v. C.R. Bard, Inc.	2:19-cv-03604
Mary Self v. C.R. Bard, Inc.	2:19-cv-02247
Larry Tatom v. C.R. Bard, Inc.	2:18-cv-01139
Frank Tolerico v. C.R. Bard, Inc.	2:19-cv-01297
Maria Alarcon v. C. R. Bard, Inc.	2:17-cv-00197
Jerry Lee Black v. C. R. Bard, Inc.	2:19-cv-00194
Juanita Coller v. C. R. Bard, Inc.	2:19-cv-03470
Leon Cook v. C. R. Bard, Inc.	2:19-cv-03574
Hilda Garcia v. C. R. Bard, Inc.	2:19-cv-01352
Lorella N. Hammond v. C. R. Bard, Inc.	2:16-cv-02104
Lorella N. Hammond v. C. R. Bard, Inc.	2:17-cv-00183
Derrick Hardnett v. C. R. Bard, Inc.	2:18-cv-01336
Donald H. Kehl v. C. R. Bard, Inc.	2:18-cv-03773
Sabrina Dixon v. C. R. Bard, Inc.	2:18-cv-04885
Patrick Martin v. C. R. Bard, Inc.	2:16-cv-02135
Pearlina McMillian v. C. R. Bard, Inc.	2:19-cv-02674
Brenda Ohl v. C. R. Bard, Inc.	2:19-cv-00284
Alexandra Parsley v. C. R. Bard, Inc.	2:18-cv-01575
Rachel Caruth v. C. R. Bard, Inc.	2:16-cv-03167
Donald Shadegg v. C. R. Bard, Inc.	2:19-cv-03538
Robert Tucker v. C. R. Bard, Inc.	2:19-cv-03621
Ralph Vernom Wagner, Jr. v. C. R. Bard, Inc.	2:17-cv-02790
Stanford Young v. C. R. Bard, Inc.	2:19-cv-03311
Angela Asberry v. C. R. Bard, Inc.	2:19-cv-01468
Lenward Bentley v. C. R. Bard, Inc.	2:19-cv-01540



David Cox v. C. R. Bard, Inc.	2:19-cv-00367
Darryl Allen Fiset v. C. R. Bard, Inc.	2:19-cv-00198
Maria Fritz v. C. R. Bard, Inc.	2:18-cv-02824
Donna Harris v. C. R. Bard, Inc.	2:19-cv-01956
Sandra Harvey v. C. R. Bard, Inc.	2:19-cv-02045
Shiray Jackson v. C. R. Bard, Inc.	2:18-cv-04404
Paula Jordan v. C. R. Bard, Inc.	2:17-cv-03683
James Litchfield v. C. R. Bard, Inc.	2:19-cv-01460
Erin Sechrest v. C. R. Bard, Inc.	2:18-cv-04732
Brittni Shaw v. C. R. Bard, Inc.	2:19-cv-03079
Kimberly Wiesen v. C.R. Bard, Inc.	2:19-cv-01967
Nickie Camp v. C. R. Bard, Inc.	2:19-cv-03957
John Hager, Jr. v. C. R. Bard, Inc.	2:19-cv-00740
Robin Hickmond v. C. R. Bard, Inc.	2:17-cv-01222
Sharon Jones v. C. R. Bard, Inc.	2:19-cv-00679

**IT IS SO ORDERED.**

Dated this 4th day of March, 2020.



David G. Campbell  
Senior United States District Judge